

**CITY OF HOUSTON
STATEMENT OF PRINCIPLES
PROPOSED MUNICIPAL STREET AND DRAINAGE UTILITY SYSTEM**

I. Creation and Purpose.

If the Renew Houston charter amendment (Proposition 1) is approved by the voters on November 2, 2010, the City will create a dedicated, pay-as-you-go fund to improve the City's streets and drainage facilities to help keep them in good repair, and to plan upgrades and improvements to meet future needs as the City grows. This task will be handled through the creation of a Municipal Streets and Drainage Public Utility System ("System") as authorized by state law.

II. Funding Sources.

At the beginning of the City's 2012 fiscal year (July 1, 2011), the System would be funded with four separate sources of revenue:

- **Developer impact fees** for properties under development. This will be a separate impact fee and will not affect the current impact fees levied for water and sewer facilities. This fee will be calculated by a process defined in state law and approved by City Council.
- **Drainage fees**, as shown below, for properties served by the System, calculated to generate at least \$125 million during the City's 2012 fiscal year and each fiscal year thereafter.
- **11.8¢ of the City's property tax**, which is the amount currently spent by the City for street and drainage services.
- The **proceeds from METRO, TxDOT, federal or other contracts, or grants** for street and drainage projects.

III. Lock Box Feature.

All funds raised for the System will be placed in a dedicated fund that **cannot** be diverted to any other City purpose. See Legal Opinion of City Attorney attached.

IV. Property To Be Benefitted.

Only those properties that receive drainage services will pay the drainage fee. The drainage fee must, by law, be calculated to ensure that all the owners of those properties pay only their fair share of the cost of providing the drainage service to their properties. The only properties that will be exempt are those that must be exempted under state law, including: land appraised for agricultural use, public and private colleges and universities, and property owned by state agencies.

V. Calculation of Drainage Fee.

A. Impervious Surface (“Hard Area”)

All fees will be based on square footage of actual impervious surface (hard area) on the property, which will be determined by the use of digitized mapping data. “Impervious surface” means any area that does not readily absorb water, such as buildings, decks, patios, driveways, and other paved areas.

B. Residential Property (single-family homes and duplexes)

For residential properties served by:

- **curb and gutter drainage**, the drainage fee is calculated to be **3.2¢** per square foot per year of actual impervious surface.
- **open ditch drainage**, the drainage fee is calculated to be **2.6¢** per square foot per year of actual impervious surface.

Sample Residential Calculations

1. By way of example, the typical residential lot in Houston is 5,000 square feet. The amount of impervious surface or hard area on such a lot would typically be 1,900 square feet. Such property served by curb and gutter drainage would have a drainage fee of \$5.07 per month, and such property served by open ditch drainage would have a drainage fee of \$4.12 per month.

2. If Harris and Fort Bend County property owners would like to approximate the drainage fee they would pay, they can go to their property listing on the Harris County Appraisal District’s property tax website at www.hcad.org, or the Fort Bend County Appraisal District website at www.fbcad.org. Add up the primary lot improvements (“PRI”) in the “Building Areas” portion of the appraisal district record, then add 38% of that number to account for hard areas not covered by that data, such as driveways. Multiply the total number of square feet of impervious area by 3.2¢ for curb and gutter drainage, or 2.6¢ for open ditch drainage, to obtain the yearly drainage fee. The monthly fee would be calculated by dividing the yearly drainage fee by 12.

3. If property owners know their property’s actual impervious surface (hard area), such as from a survey, the drainage fee can be calculated by multiplying the total number of square footage of hard area by 3.2¢ for curb and gutter drainage, or by 2.6¢ for open ditch drainage to obtain the yearly drainage fee, then dividing by 12 to calculate the monthly fee.

C. Commercial / Industrial / Institutional Properties

The drainage fee for commercial, industrial and institutional properties is calculated to be 3.2¢ per square foot per year of actual impervious surface on the property.

VI. Appeals.

An on-line verification and correction process will be put in place, and a customer may appeal a drainage fee to a neutral body that will be established which shall have the authority to adjust the drainage fee based on the evidence presented.

VII. Review of Fees.

The drainage fee rates will not be raised for at least ten years and any increase will require a super majority (2/3 vote) of City Council to approve.

The City will regularly review available data on impervious surface for accuracy and will make adjustments to the calculations of square footage to ensure that fees are nondiscriminatory, equitable and reasonable.

VIII. Project Priorities.

The current 5 year Capital Improvement Plan (CIP) will be used until a full needs assessment has been completed and presented to City Council. A needs assessment for streets and drainage will be updated by the Public Works and Engineering Department and both will be presented to City Council in July 2011. Scheduling of projects will be prioritized based on technical evaluation.

IX. No Street Assessments.

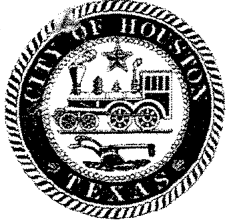
Property owners will no longer be subject to individual assessments for street improvements.

X. Oversight.

The Mayor will appoint an Oversight Committee to advise on priorities and process. The Committee will consist of individuals with significant backgrounds in community development, and infrastructure assessments, and other stakeholders. Appointees will **not** be drawn from contractors, engineers or firms participating in any System projects.

XI. Local Small Business Participation.

Participation of local small businesses will be strongly encouraged in the design and construction of drainage and street infrastructure. The City's MWBE program and Hire Houston First will apply. A mentorship program will be put in place to assist local small businesses in pursuing these opportunities. An internship program will also be created with local colleges.



CITY OF HOUSTON

Legal Department

Interoffice

Correspondence

To: Andy Icken
Chief Development Officer
Mayor's Office

From: David M. Feldman
City Attorney

Date: September 24, 2010

Subject: Adherence to Charter Provisions

OPINION NO. 2010004

You have asked for confirmation that if the voters approve Proposition 1, which creates a Dedicated Drainage and Street Fund ("Fund") for the City's drainage and street infrastructure, the City would be obligated to adhere to the new charter provisions and could not use the dedicated drainage and street fund for other City purposes.

Home Rule City Charter. The charter of a city is its constitution, and the City can exercise only such powers granted therein.

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation, – not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation nor its officers can do any act, or make any contract, or incur any liability, not authorized thereby, or by some legislative act applicable thereto. All acts beyond the scope of the powers are void. (Emphasis added).¹

The law is clear that the City cannot deviate from the language of the Charter without amending the Charter. The language of Proposition 1 is clear that annual appropriations from the Fund may not be used to pay debt service, must be used exclusively on a pay-as-you-go basis for capital costs of drainage and streets (including planning, engineering and right-of-way acquisition), and no more than 25% may be used for maintenance and operation. To allocate appropriations to any other purposes would violate those Charter provisions. Unless and until the City Charter is amended by the voters

¹1 Dillon, *Municipal Corporations* (5th Ed.) vol. 1, § 237; *Foster v. City of Waco*, 255 S.W. 1104 (Tex. 1923); *Davis v. City of Taylor*, 67 S.W.2d 1033 (Tex. 1934). As the court said in *Davis*, "[o]ther authorities could be readily cited, but this principle is so well established that further citations are not necessary." *Davis* at 1034.

in a subsequent election, the City is bound by the terms of Proposition 1's petition language.²

Statutory Provisions.

Should Proposition 1 pass, a drainage utility system will be set up pursuant to Texas Local Government Code Chapter 552, Subchapter C, "Municipal Drainage Utility Systems." Section 552.049 of that chapter requires that the income of a drainage utility system be segregated in the City's accounts, and while the definition of "cost of service" set out in Section 552.044 anticipates a proration of costs for items such as legal costs and administration (which allows the City to reimburse those costs if incurred internally), it prohibits transfers to the general fund when drainage fees are to be used for future construction, repair, or maintenance of the drainage system. This is consistent with the language of Renew Houston's proposed charter amendment and its intent that the Fund's assets be used only for drainage purposes.³



David M. Feldman
City Attorney

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²Article 11, § 5 of the Texas Constitution provides that city charters may not be altered, amended or repealed more often than every two years.

³It should be noted that Section 1502.059 of the Government Code addresses funds for utility systems that are pledged to pay debt service on public securities (bonds and notes). This provision is inapplicable to Proposition 1 because the Fund's pay-as-you-go funding mechanism prohibits the use of public securities and mandates that the proceeds of the Fund, after drainage and operation expenses, "shall be used exclusively on a pay-as-you-go basis for capital costs" (i.e., not for debt service on public securities).